

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	

**COMMENTS OF THE GREENLINING INSTITUTE ON THE REQUEST FOR
RECONSIDERATION CONCERNING LIFELINE BROADBAND PROVIDERS**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW	1
III.	ARGUMENT	2
	A. THE FCC’S WHOLESALE REVOCATION OF LBP DESIGNATION WOULD CAUSE UNNECESSARY DELAY AND DISCOURAGE COMPETITION, INVESTMENT, AND INNOVATION.....	2
	1. The Order on Reconsideration Halts the LBP Streamlining Process and Adds Unnecessary Regulatory Burdens to Applicants.....	3
	2. The Commission’s Revocation of the LBP Designations Promotes Uncertainty, Creating a Significant Risk of Reduced Investment, and Participation in the Lifeline Broadband Program.	4
	B. THE COMMISSION’S CURRENT PROTECTIONS AGAINST WASTE, FRAUD AND ABUSE ARE MORE THAN SUFFICIENT.	5
	C. THE COMMISSION’S REVOCATION OF LIFELINE BROADBAND PROVIDER DESIGNATIONS WOULD LEAVE DISADVANTAGED COMMUNITIES AND STUDENTS BEHIND.	6
IV.	CONCLUSION.....	8

I. INTRODUCTION

In accordance with the Commission's March 1, 2017 Public Notice, The Greenlining Institute ("Greenlining") hereby submits these comments.

The Commission should restore Lifeline Broadband Provider (LBP) status to the nine providers that lost LBP designation in the Commission's February Order.¹ These providers want to work with the FCC to give disadvantaged communities and students affordable access to essential broadband services. The Order punishes consumers and providers by preventing them from participating in a program which already has ample protections against waste, fraud, and abuse.

II. OVERVIEW

The Commission recently designated nine providers as eligible Lifeline Broadband Providers (LBP).² The Commission determined these providers met the public interest requirements for LBP designation due to their compliance history with program rules, strong protections against waste, fraud, and abuse and because the service offerings would increase consumer choice and affordable access to the internet.³ On February 3, 2017, the Commission reversed course and revoked those LBP designations citing the need for additional time to

¹ *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 17-128 (February LBP Order).

² *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 17-87 (January LBP Order); *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 16-1325, 31 FCC Rcd 12736 (December LBP Order).

³ See *December LBP Order*, 31 FCC Rcd at 12742, 12743, paras. 21-23; *January LBP Order*, DA 17-87, at paras. 23-25.

consider measures that might be necessary to prevent further waste, fraud, and abuse in the Lifeline program.⁴ The Commission subsequently sought comment on this Order.

III. ARGUMENT

The Commission should restore the LBP designations because revoking those designations would discourage participation in the Lifeline for Broadband program. The Commission has made recent changes to the Lifeline program, mitigating many of the concerns of waste, fraud and abuse raised in the Order. Restoring LBP designations to the affected providers will give struggling families affordable access to the tools necessary to succeed in today's digital economy.

A. THE FCC'S WHOLESALE REVOCATION OF LBP DESIGNATIONS WOULD CAUSE UNNECESSARY DELAY AND DISCOURAGE COMPETITION, INVESTMENT, AND INNOVATION.

The Commission's stated goal is to ensure that all "Americans should have affordable access to robust and reliable broadband products and services. Regulatory policies must promote technological neutrality, competition, investment, and innovation to ensure that broadband service providers have sufficient incentive to develop and offer such products and services."⁵ The Order compromises each of those goals, raising the specter of burdensome regulatory barriers and promoting uncertainty.

⁴ See *February LBP Order*, at paras. 7-8, 14. This comment only addresses concerns of waste, fraud and abuse and does not address any of the procedural errors the Commission raised. Where such errors exist, the Commission should allow any such errors to be resolved and return the LBP petitions to streamlined status.

⁵ Federal Communications Commission, *Strategic Plan of the FCC*, available at <https://www.fcc.gov/general/strategic-plan-fcc> (last visited March 11, 2017).

1. The Order on Reconsideration Halts the LBP Streamlining Process and Adds Unnecessary Regulatory Burdens on Applicants.

The 2016 Lifeline Modernization Order established a streamlined process “with the goal of providing incentives for broadband providers to participate and increasing competition and meaningful broadband offerings to Lifeline subscribers.”⁶ Increasing participation through this process drives down the cost of service, and increases the value derived from every universal service dollar. Commenters noted that the non-streamlined “designation process is unnecessarily burdensome and hinders competition in the Lifeline market.”⁷ Providers and consumer advocates alike supported a streamlined designation process because it would remove regulatory barriers, facilitating market entry and greater participation in the Lifeline Broadband program.⁸

If the Commission revokes the LBP designation for the nine providers that used the streamlined designation, it will not only punish these first movers, but also signals that the streamlining process is effectively dead until the Commission considers new measures to curb waste, fraud and abuse – a process that lacks a clear timeline. Indeed, since the release of the Order, there have only been two applications for LBP designation, neither of which used the streamlining process.⁹ In contrast, from October to January there were 38 applications, 13 of which used the streamlining process. While the uncertainty caused by the revocations may not be the only cause of this decline, it seems likely that Commission’s Order will chill participation in the Lifeline program, especially for smaller carriers. This postpones deployment of Lifeline for

⁶ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket NO. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3964, para. 6 (2016) (*2016 Lifeline Modernization Order*).

⁷ *Id.* at 4046, para. 235.

⁸ See *Id.* at 4046-4047, paras. 235-36, n. 628.

⁹ Federal Communications Division, *Lifeline Broadband Provider Petitions & Public Comment Periods*, available at <https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods> (last visited March 11, 2017).

broadband. The result will be significant delays in providing access to affordable broadband for low-income Americans--exactly the outcome the streamlining process was designed to avoid.

2. The Commission's Revocation of the LBP Designations Promotes Uncertainty, Creating a Significant Risk of Reduced Investment, and Participation in the Lifeline Broadband Program.

A consistent refrain from corporations is that the way to encourage investment is to reduce regulatory uncertainty. Chairman Pai himself noted that “with easy-to-understand, bright-line rules, a business can plan. But a thick regulatory haze—rules that are unclear with the overhang of more rules to come— should make any rational businesses hold back on investment and start returning any free cash back to their shareholders.”¹⁰ The streamlined LBP process created clear, bright line rules for obtaining LBP designation that are muddled by this Order.¹¹

The Order creates uncertainty by revoking LBP designation for carriers that made the mistake of investing the resources and time to promptly develop Lifeline Broadband offerings for low-income communities. Revoking LBP status to have “more time” to consider additional measures to combat overstated concerns of waste, fraud and abuse creates the “thick regulatory haze” that Chairman Pai warned about, making providers uncertain whether the rules will change in the future. As Chairman Pai made clear, such uncertainty holds back investment, reducing innovation and access to broadband for those in the digital divide.

¹⁰ See *Dissenting Statement of Commissioner Ajit Pai Re: Protecting and Promoting the Open Internet*, GN Docket No. 14-28, pg. 8, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-24A5.pdf (last visited March 8, 2017).

¹¹ See generally *2016 Lifeline Modernization Order*, 31 FCC Rcd at 4065-66 (outlining the streamlined eligibility process).

B. THE COMMISSION’S CURRENT PROTECTIONS AGAINST WASTE, FRAUD AND ABUSE ARE MORE THAN SUFFICIENT.

The Commission has already addressed concerns of fraud, waste, and abuse in its 2016 decision.¹² Therefore, concerns regarding fraud, waste and abuse raised in this Order are unfounded, especially considering recent program modifications. In the Order, the Commission justified revocation stating it needed more time to address potential fraud, waste and abuse stemming from the use of the independent economic household worksheet, identity verification dispute resolution processes, address verification, and discrepancies between reimbursement requests and subscriber listings in the National Lifeline Accountability Database (NLAD).¹³ Simply put, these concerns are overstated.¹⁴

Both the FCC and USAC recently enacted measures to address these concerns. The FCC took steps to create the National Eligibility Verifier in its 2016 Lifeline Modernization Order.¹⁵ The verifier will make eligibility determinations and enroll subscribers into the program, closing off “one of the main avenues historically leading to fraud and abuse in the Lifeline program.”¹⁶ Similarly, USAC has also improved NLAD to address many of the issues raised by the Commission. These reforms include stronger identity verification override protections, greater accountability and document retention from agents and improved duplication detection.¹⁷ Given

¹² See generally *Id.* at 4006-21, 4111-20 (ordering a 3rd party evaluation of the program, establishing the national verifier, revising the auditing process and standardizing certification forms to combat waste, fraud and abuse).

¹³ See 2017 Order on Reconsideration, DA 17-128 at para. 8.

¹⁴ See U.S. House, Committee on Energy and Commerce. *The Lifeline Program: Examining Recent Allegations of Waste, Fraud and Abuse, Interim Report* (Lifeline Oversight Report), at 17 (2016), available at [https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20\(7.12.2016\).pdf](https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20(7.12.2016).pdf) (last visited March 11, 2017) (finding allegations of waste and fraud through use of the IEH form were significantly inflated).

¹⁵ See generally 2016 Lifeline Modernization Order, 31 FCC Rcd at 4011, para. 126 et seq.

¹⁶ *Id.* at 4007, para. 129.

¹⁷ See *Lifeline Oversight Report* at 11-17.

the strength of current protections against waste, fraud, and abuse, the Commission should allow these carriers to provide Lifeline broadband access while concurrently assessing the effectiveness of these new reforms through increased auditing and enforcement – not by suspending the LBP designation process for an indefinite amount of time.

C. The Commission’s revocation of Lifeline Broadband Provider Designations Would Leave Disadvantaged Communities and Students Behind.

In the Lifeline Modernization Order, the Commission stated that, “much like telephone service a generation ago, broadband has evolved into the essential communications medium of the digital economy...access to broadband shortens the distance to high-quality education, meaningful employment, and reliable healthcare. It is now the dominant technology used to communicate, educate, inform, and entertain.”¹⁸ Those stuck in the digital divide are disproportionately from communities of color, economically disadvantaged, without formal education, non-English speaking and older.¹⁹ For those who choose to forego broadband access, nearly half cite cost as a major factor in that decision.²⁰ Allowing these nine carriers to provide affordable broadband serves the public interest because families will not have to forego other essentials in order to be able to apply for a job online²¹ or do homework at home.

A closer look at the offerings and communities served by some of the carriers underscores this point. For example, Spot-On Networks offers affordable broadband to residents

¹⁸ 2016 Lifeline Modernization Order, 31 FCC Rcd at 3966, para. 12.

¹⁹ *Id.* at 3966, para. 19.

²⁰ See Lee Rainie, *Digital Divides 2016*, Pew Research Center, slide 39, available at <http://www.pewinternet.org/2016/07/14/digital-divides-2016/> (last visited March 14, 2017).

²¹ Nearly four out five Americans report using the internet to find a job. See Aaron Smith, *Searching for Work in the Digital Era*, Pew Research Center, available at <http://www.pewinternet.org/2015/11/19/searching-for-work-in-the-digital-era/> (last visited March 14, 2017).

of the Queensbridge Houses, the largest public housing development in North America.²² 66% of Queensbridge residents are black and 28% are Hispanic or Latino.²³ Spot On's plan delivers broadband at excellent 20/20 speeds with no data cap for \$9.75/mo.²⁴ This service would be a boon to Queensbridge's residents who have had to rely on expensive and unreliable service from Time Warner Cable.²⁵ Given that Spot-On's prices can be 1/8th of the cost of access from Time Warner Cable,²⁶ Spot-On's designation as an LBP would increase competition and would, hopefully, cause Time Warner Cable to increase service quality and lower prices. Additionally, a success at Queensbridge would support the entry of entrepreneurial newcomers like Spot On into otherwise protected markets. These are exactly the types of pro-competitive public benefits envisioned by the Lifeline program and are threatened by this decision.

Leaving the LBP designations intact would also help efforts to close the homework gap. As many as 70% of teachers assign homework that requires broadband access.²⁷ The Commission has itself noted "the lack of access to technology and the Internet outside of the classroom makes it difficult and sometimes impossible for students to complete their homework assignments and projects, resulting in student academic unpreparedness as well as decreased academic performance and classroom engagement in school."²⁸ Kajeet Education Lifeline, which holds one of the LBP designations at issue, partners with schools to identify households

²² See Petition of Spot On Networks for Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197 at para. 8 (filed Oct. 27, 2016) (Spot On Petition).

²³ City-Data, <http://www.city-data.com/city/New-York.html> (last visited March 13, 2017).

²⁴ See Spot On Petition at para. 7.

²⁵ See Gideon Lewis-Kraus, *Inside the Battle to Bring Broadband to New York's Public Housing*, Wired, available at <https://www.wired.com/2016/11/bringing-internet-to-new-york-public-housing/> (last visited March 15, 2017).

²⁶ *Id.*

²⁷ Remarks of FCC Commissioner Jessica Rosenworcel, "Closing the Homework Gap" (March 17, 2016), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-338474A1.pdf (last visited March, 15, 2017).

²⁸ See 2016 Lifeline Modernization Order, 31 FCC Rcd at 4095-96, para. 369.

where students lack adequate broadband access and provides those households with a wireless hotspot and 6 GB of 4G LTE Education broadband per month at no cost to the household.²⁹ This program is an innovative and affordable step towards closing the homework gap. However, the Commission's revocation of Kajeet's LBP designation would thwart these significant efforts to close the homework gap. Disadvantaged students will fall further behind their peers while the Commission considers new measures, a process that could take months. Revocation of the LBP designations at issue would therefore harm the public interest.

IV. CONCLUSION

The recent reforms in the Lifeline program and the significant benefits of a competitive and affordable broadband market for low-income communities provides ample justification for finding LBP designation is in the public interest. For these reasons, the Commission should leave the LBP designations to the nine providers intact.

Filed: March 16, 2017

Respectfully submitted,

/s/ Vinhcent Le
Vinhcent Le
Legal Fellow
The Greenlining Institute
360 14th Street, 2nd Floor
Oakland, CA 94612
Phone: 510-809-1808
Email: vinhcenl@greenlining.org

/s/ Paul Goodman
Paul Goodman
Senior Legal Counsel
The Greenlining Institute
360 14th Street, 2nd Floor
Oakland, CA 94612
Phone: 510-898-2053
paulg@greenlining.org

²⁹ Petition of Kajeet, Inc. for Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier, WC Docket No. 09-197 (filed Nov. 1, 2016), at 10.